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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 PHENENO KENZELL AUSLER,
12 AKA KENNY WALKER
13 CDCR #p-21872,

Plaintiff,

14
15 vs.

16 TAWAINA THOMPSON, et al.,
17

18 Defendants.
19

Civil No. 11cv1427 MMA (NLS)

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEES PURSUANT TO
28 U.S.C. § 1914(a) AND FOR
FAILING TO MOVE
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

20 Plaintiff, a state prisoner currently incarcerated at the Richard J. Donovan Correctional
21 Facility located in San Diego, California, and proceeding pro se, filed this civil action. Plaintiff
22 did not prepay the civil filing fee required by 28 U.S.C. § 1914(a); nor did he submit a Motion
23 to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

24 **I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

25 Any party instituting a civil action, suit or proceeding in a district court of the United
26 States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C.
27 § 1914(a). An action may proceed despite a party’s failure to pay only if the party is granted
28 leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See Andrews v.*

1 *Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th
 2 Cir. 1999). As noted above, Plaintiff did not prepay the \$350 filing fee required to commence
 3 a civil action when he filed it; nor has he submitted a Motion to Proceed IFP. Therefore, the
 4 case must be dismissed pursuant to 28 U.S.C. § 1914(a).

5 **II. CONCLUSION AND ORDER**

6 For the reasons set forth above, the Court hereby:

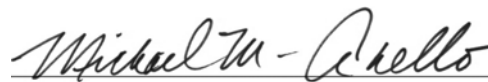
7 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 8 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

9 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
 10 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 11 IFP which includes a certified copy of his trust account statement for the 6-month period
 12 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

13 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with
 14 the Court's form "Motion and Declaration in Support of Motion to Proceed *In Forma*
 15 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
 16 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
 17 prejudice and without further Order of the Court.

18 **IT IS SO ORDERED.**

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 20 DATED: July 15, 2011



21 Hon. Michael M. Anello
 22 United States District Judge
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